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IN THE COURT OF APPEALS OF INDIANA

KELLY N. RAIBLE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0701-CR-35
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0607-FC-229

September 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Kelly N. Raible appeals his sentence for class C felony failure to register as a sex offender. We affirm.

Issues

We restate the issues as follows:

I. Whether the trial court abused its discretion in sentencing Raible; and

II. Whether Raible's sentence is inappropriate in light of the nature of the offense and his character.

Facts and Procedural History[1]

In 2001, Raible was convicted of sexual battery in Massachusetts and was sentenced to probation. He violated his probation and served eighteen months in prison. On March 15, 2005, Raible was convicted of class D felony failure to register as a sex offender in Madison County, Indiana, and was sentenced to two years' imprisonment.

On July 21, 2006, Raible was charged with class C felony failure to register as a sex offender for failing to register or update his registration between August 24, 2005, and July 17, 2006. *See* Ind. Code § 11-8-8-17 (stating that a sex offender who knowingly or intentionally fails to register commits a class C felony if he has a prior unrelated conviction for failure to register). On November 14, 2006, Raible agreed to plead guilty as charged pursuant to a plea agreement, with the executed portion of his sentence capped at four years. At the sentencing hearing on December 11, 2006, Raible stated that his presentence

investigation report ("PSI") was accurate. The trial court found the twenty-five-year-old Raible's "significant" history of criminal and delinquent activity to be an aggravating factor and his guilty plea to be a mitigating factor. Tr. at 29. The court also acknowledged that Raible's crime "probably [caused] no serious harm to persons or property." *Id*. at 33. The court sentenced Raible to seven years, with three and a half years executed and the rest suspended to probation.

Discussion and Decision

I. Abuse of Discretion

"A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years." Ind. Code § 35-50-2-6. A trial court may impose any sentence that is authorized by statute and permissible under the Indiana Constitution, regardless of the presence or absence of aggravating circumstances or mitigating circumstances. Ind. Code § 35-38-1-7.1(d). In *Anglemyer v. State*, our supreme court explained that under the sentencing scheme as amended in April 2005, "Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense." 868 N.E.2d 482, 490 (Ind. 2007).

> [T]he statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating.

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[1] We note that Raible's counsel included Raible's pre-sentence report in the appellant's appendix. Indiana Administrative Rule 9(G)(1) states that the information therein "is excluded from public access and is confidential." Indiana Trial Rule 5(G)(1) requires that such documents be separately identified and "tendered on light green paper or have a light green coversheet attached to the document, marked 'Not for Public Access' or 'Confidential.'"

Id.

"So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." *Id*. "An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id*. (citation and quotation marks omitted). Examples of abuses of sentencing discretion include

> entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law.

Id. at 490-91.

Raible contends that the trial court abused its discretion in failing to "discuss how [his] prior offenses related to his current offense" and in "fail[ing] to engage in a balancing of the identified mitigating and aggravating circumstance." Appellant's Br. at 8. Regarding the latter, our supreme court has noted that "the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence," and therefore "a trial court can not now be said to have abused its discretion in failing to 'properly weigh' such factors." *Anglemyer*, 868 N.E.2d at 491. As for the former, a trial court is not required to expound upon the relation of a defendant's prior offenses to his current offense. Here, the trial court recited Raible's prior offenses as listed in the PSI: a 1996 juvenile theft adjudication, at least one (and possibly two) convictions for felony possession of marijuana in 1999, forgery and arson convictions in 2000, and a 2004 misdemeanor false informing conviction, not to mention the predicate convictions for sexual

battery and class D felony failure to register as a sex offender, as well as Raible's admission that "his probation was revoked every time he has been on probation." Appellant's App. at 36. We think the "gravity, nature and number" of Raible's prior offenses are self-evident and underscore the significance of his criminal history as an aggravating factor. *Morgan v. State*, 829 N.E.2d 12, 15 (Ind. 2005). In sum, we find no abuse of discretion.

II. Appropriateness of Sentence

Raible asks us to review his sentence pursuant to Indiana Appellate Rule 7(B), which provides that this Court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Our supreme court has stated that "[a] defendant must persuade the appellate court that his or her sentence has met this inappropriateness standard of review." *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

The nature of the offense, although nonviolent, bespeaks a callous disregard for the sex offender registration statutes that were enacted to protect the general public. As the trial court observed, "[t]hese people have the right to know who's living next door, who's living in their neighborhood. The government places a very high premium on that and says that if you won't register, you're committing a felony." Tr. at 33-34. As for Raible's character, we acknowledge that he accepted responsibility for his offense by pleading guilty,[2] but his

[2] Raible also points to his perfunctory expression of remorse at the sentencing hearing as favorable evidence of his character. *See* Tr. at 18 ("You're sorry for what you did wrong?" "Yeah, most definitely."). We note that "[t]he trial court is in the best position to judge the sincerity of a defendant's remorseful statements," *Dylak v. State*, 850 N.E.2d 401, 410 (Ind. Ct. App. 2006), *trans. denied*, and that the trial court in this case did not find Raible to be remorseful.

lengthy criminal history warrants a lengthy sentence for a class C felony. After due consideration of the trial court's decision, we cannot say that Raible's sentence is inappropriate.

Affirmed.

DARDEN, J., and MAY, J., concur.